HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1072 of 2005 (M/S)
Kamal jeet and Another
Vs
State and others.

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 07.02.2006.

Initial of Judge

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1072 (MS) OF 2005

1. Kamaljeet Singh, son of Paramjeet Singh, resident of Village Haripur Phatkuan, Tehsil Haldwani, District Nainital.
2. U.S. Srivastava Memorial Educational Society, Sector-25, Indira Nagar, Lucknow through its Secretary Sri Krishna Bahadur Lal, son of late U.S. Srivastva, resident of Sector-25, Sherwood College Campus, Indira Nagar, Lucknow.

....Petitioners.

Versus

1. The State of Uttaranchal, through its Secretary, Agriculture, Civil Secretariat, Uttaranchal, Dehradun.
2. Additional Chief Revenue Commissioner, Circuit Court, Uttaranchal, Nainital.
3. Assistant Collector, Bhawar, District Nainital.

.....Respondents.

&

W.P. No. 1103(ms) OF 2005

1. Paramjeet Singh, son of Charan Singh, resident of village Haripur Phatkuan, Tehsil Haldwani, District Nainital.
2. U.S. Srivastava Memorial Educational Society, Sector-25, Indira Nagar, Lucknow through its Secretary Sri Krishna Bahadur Lal, son of late U.S. Srivastava, resident of Sector -25, Sherwood College Campus, Indira Nagar, Lucknow.

.....Petitioners.

1. The State of Uttaranchal, through its Secretary, Agriculture, Civil Secretariat, Uttaranchal, Dehradun.
2. Additional Chief Revenue Commissioner, Circuit Court, Uttaranchal, Nainital.
3. Assistant Collector, Bhawar, District Nainital.

.....Respondents.

&

W.P. No. 1104 (ms) OF 2005

1. Paramjeet Singh, son of late Charan Singh, resident of village Haripur Phatkuan, Tehsil Haldwani, District Nainital.
2. U.S. Srivastava Memorial Educational Society, Sector-25, Indira Nagar, Lucknow through its Secretary Sri Krishna Bahdur Lal, son of late U.S. Srivastva, resident of Sector-25, Sherwood College Campus, Indira Nagar, Lucknow.

.....Petitioners.

Versus

1. The State of Uttaranchal, through its Secretary, Agriculture, Civil Secretariat, Uttaranchal, Dehradun.
2. Additional Chief Revenue Commissioner, Circuit Court, Uttaranchal, Nainital.
3. Assistant Collector, Bhawar, District Nainital.

.....Respondents.

&

W.P. No. 1105 (ms) OF 2005

1. Gurinder Singh, son of Paramjeet Singh, resident of village Haripur Phatkuan, Tehsil Haldwani, District Nainital.
2. U.S. Srivastava Memorial Educational Society, Sector-25, Indira Nagar, Lucknow through its Secretary Sri Krishna

Bahadur Lal, son of late U.S. Srivastva, resident of Sector-25, Sherwood College Campus, Indira Nagar, Lucknow.

.....Petitioners.

Versus

1. The State of Uttaranchal, through its Secretary, Agriculture, Civil Secretariat, Uttaranchal, Dehradun.
2. Additional Chief Revenue Commissioner, Circuit Court, Uttaranchal, Nainital.
3. Assistant Collector, Bhawar, District Nainital.

.....Respondents.

Dated: 07.02.2006

Sri A.K. Srivastava, Advocate for the petitioner
Learned Standing Counsel for the respondents no. 1 to 3.

Hon'ble Rajesh Tandon, J.

Heard Sri A.K. Srivastava, learned counsel for the petitioners and Sri Syed Nadeen, learned counsel for the respondents.

By the present writ petitions, the petitioners have prayed for a writ of certiorari quashing the part of the impugned order dated 29.08.2005 by which the order dated 15.07.2004 has been set aside along with the order dated 10.06.2005.

According to the case of the petitioners, they are real owners and bhumidhar with transferable right of agricultural land situate at Village Hariur Phutkuan, Tehsil Haldwani, District Nainital. The petitioner no. 1 entered into a partnership agreement with petitioner no. 2 (a society registered under the provisions of Societies Registration Act, having its Registration No. 5686 of 1988-89) for execution of a housing project on the land detailed in paragraph 2 of the writ petition.

According to the case of the petitioner, the main object of the petitioner no. 2 includes social service for upliftment of village and rural areas in the field of education, cottage

industry, agriculture, weaker sections of society. Further the petitioner no. 2 has also undertaken the employment general programme for war windows and disabled army personnel by making programmes for self-employment and settlement through unique scheme of housing development and employment, popularly known as Sherwood Pine City.

According to the petitioner, it was provided in the agreement that the petitioner no. 1 shall provide land to the petitioner no. 2 for development of project known as “Sherwood Pine City”. According to the petitioners, the partnership agreement clearly provided that the final Sale Deed will be executed by actual owner of the land to the prospective purchasers on the direction of the petitioner no. 2 or the petitioner no. 2 and partnership firm shall execute the said sale deed. It shows that the petitioner no. 1 contributed his land to the partnership and rest of the money for the development and execution of the project has been contributed by the petitioner no.2.

Learned counsel for the petitioners has submitted that the land which was provided by the petitioner no. 1 to the partnership firm has already been declared as non-agricultural land in the proceeding U/s 143 of the U.P. Z.A. and L.R. Act, 1952 vide order dated 15.07.2004. ।जिमत the land having been declared non-agriculture U/s 143 of the Act, the nature of the land was changed from agriculture to non-agriculture and it was duly entered in the revenue record. Operative portion of the order is quoted below:-

''अतः मैं सहायक क्लेक्टर प्रथम श्रेणी हल्द्वानी तहसीलदार हल्द्वानी की आख्या से संतुष्ट होते हुए प्रार्थी श्री कमलजीत पुत्र श्री परममजीत सिंह निवास ग्राम हरिपुर फुटकुआ तहसील हल्द्वानी के खाता सं0 103 के खसरा नम्बरान रकबा 0.499 हैक्टेअर 10.3 में रकबा 00.046 हेक्टेअर भूमि रकबा, 1.34 हेक्टेअर कुल रकबा 2–720 हेक्टेअर भूमि को लगानी को अकृषक घोषित करता हूरू इस आदेप्र की एक प्रति तहसीलदार हल्द्वान को

माल अभिलेख में संप्रोधन हेतु एक प्रति उपनिबन्धक हल्द्वानी को धारा 143 अर्न्तगत पंजीयन हेतु भेजा जाय। पत्रावली वाद आवश्यक कार्यवाही के दाखिल अवसर हो।''

Thereafter, the petitioners no. 1, who is bhumidhar with transferable right and owner-in-possession of the land-in-question, handed over the possession of the land-in-question to the petitioner no. 2 for the development and execution of the project.

The petitioners no. 2 started development work on the land-in-question and underground sewer lines and electric lines were laid and the entire land was developed for a housing colony, electric poles were erected and roads were built on the plot. The petitioner no. 2 invested a huge amount of money about Rs. 2 crores for the execution of the project. However, the respondent no. 3 brought about undue pressure on petitioner no. 1 by representing that he would loose his land if he continued with the housing project in partnership with petitioner no. 2 and under the said confusion, an application was moved on behalf of the petitioner no. 1 (in all the writ petitions) for reconversion of the land to agricultural purposes U/s 144 of the Act, but before any order could be passed on the application of the petitioner no.1, the said petitioner moved an application that he does not want to press his application for conversion U/s 144 of the Act, but the same was not taken on record and the respondent no.3 without calling for any report or verifying the actual physical condition of the land-in-question on the spot made an order dated 1006.2005 reconverting the land from non-agricultural to agricultural.

Learned counsel for the petitioners has further submitted that the petitioner no. 2 had also filed an application on 31.05.2000 before the respondent no. 3 that he being an interested party, he should also be heard in the matter and the said application was taken on record.

Feeling aggrieved against the action of the respondent no. 3, petitioners filed Revision No. 313 of 2005 before the respondent no. 2 and the same was admitted and an interim order was also passed.

On 29.08.2005, the respondent no. 2 quashed the order dated 10.06.2005 passed by the respondent no. 3 and remanded the matter.

A counter affidavit has also been filed, where it has been stated that the petitioners want to overcome the provision of Section 154 of the U.P. Z.A. and L.R. Act. Both sections 154 and 143 of the U.P.Z.A. and L.R. Act are quoted below:-

" 143. Use of a holding for industrial or residential purposes.-[(1) Where [bhumidhar with transferable rights], uses his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandary which includes pisciculture and poultry farming, the Assistant Collector in-charge of the sub-division may, suo motu or on an application, after making such enquiry as may be prescribed, make a declaration to that effect.

(1-A) Where a declaration under sib-section (1) has to be made in respect of a art of the holding, the Assistant Collector in-charge of the sub-division may in the manner prescribed demarcate such part fro the purposes of such declaration.

(2) Upon the grant of the declaration mentioned in sub-section (1) the provisions of this Chapter (other than this section) shall cease to apply to the [bhumidhar with transferable rights], with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject.

(3) *Where a bhumidhar with transferable rights has been granted, before or after the commencement o the Uttar Pradesh Land Laws (Amendment) Act, 1978, any loan by the Uttar Pradesh Financial Corporation or by any other*

Corporation owned or controlled by the State Government, on the security of any land held by such bhumidhar, the provisions of this chapter other than this section shall ease to apply to such bhumidhar with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject.]"

[154. Restriction on transfer by a bhumidhar.-(1) Save as provided in sub-section (2), no bhumidhar shall have the right to transfer by sale or gift, any land other than tea gardens to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land if any, held by his family will, in the aggregate, exceed 5.0586 hectares (12.50 acres) in Uttar Pradesh.

[Explanation-For the removal of doubt it is hereby declared that in this sub-section the expression 'person' shall include and be deemed to have included on June 15,1976 a 'Co-operative Society':

Provided that there the transferee is a co-operative society, the land held by it having been pooled by its members under clause (a) of sub-section (1) of section 77 of the Uttar Pradesh Co-operative Societies Act, 1965 shall not be taken into account in computing the 5.0586 hectares (12.50 acres) land held by it.]

(2) Subject to the provisions of any other law relating to the land tenures for the time being in force, the State Government may, by general or special order, authorize transfer in excess of the li it prescribed in sub-section (1) if it is of the opinion that such transfer is in favour of a registered cooperative society or an institution established for a charotable purpose, which does not have land sufficient for its need or that the transfer is in the interest of general public.

Explanation.-For the purposes of this section, the expression 'family' shall mean the transferee, his or her wife or

husband (as the case may be) and minor children, and where the transferee is a minor also his or her parents.]

Petitioners have submitted that once the order of remand has been passed, it was not open to quash the order dated 15th July, 2004 by which the relief under Section 143 of the U.P.Z.A. and L.R. Act was granted. The order dated 29.08.2005 is modified to that extent that it will be open to the parties to bring to the notice of the court with regard to the order dated 15th July, 2004, who shall examine take into consideration while passing the final order. However, it will be open to the Assistant Collector to take into consolidation the order dated 15th July, 2004 and the impugned order dated 29.08.2005 while quashing the order dated 15th July, 2004 is set aside to that extent.

However, any constructions raised during the pendency of the case shall be subject to the final order passed in proceedings U/s 143 of the U.P.Z.A. and L.R. Act.

After taking into consideration the aforesaid facts, I am of the view that the order of remand passed by the respondent no. 2 needs no interference under Article 226 of the Constitution of India except to modify the order dated 29.08.2005 to the extent it has quashed the order dated 15th July, 2004.

During the pendency of the case, I have appointed Advocate Commissioners, who have also inspected the spot with regard to the construction. The reports submitted by the Advocate Commissioners shall be taken into consideration by the Assistant Collector while deciding the matter.

Subject to the aforesaid observations, writ petitions partly succeeds and are allowed. No order as to costs.

(Rajesh Tandon, J.)

07.02.2006
Rathour